IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.1089 OF 2005

M/s. Harish Kadam & Co.
and Ors. ..Petitioners

Vs.

G.A.Kamble & Ors. ..Respondents

...

Mrs.Neeta Parikh Advocate for Petitioners
Mr.Y.S.Shinde, A.P.P. for the State

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CORAM: SMT.V.K.TAHILRAMANI,J.

DATE : JUNE 21 2005

P.C.

1. Heard the learned advocate for the petitioners and the learned A.P.P. for the State.

2. The petitioners are seeking quashing of the process issued by the learned Metropolitan Magistrate, 7th Court, Dadar, Mumbai in Case No.203/S/2004. The said process has been issued under sections 138 r.w. 141 of Negotiable Instruments Act.

3. The petitioners had preferred an application before the learned Magistrate for recalling of process. The said application came to be rejected by an order dated 2.3.2005. Being aggrieved by the said order, the petitioners have approached this Court. The learned advocate for the petitioners has submitted that the process has wrongly been issued against the petitioners and the said process ought to be set aside.

3. For the reasons recorded in my order dated 8th June, 2005 in Cri.Application No. 645 of 2005 and order dated 13th June, 2005 in W.P.No. 213 of 2005, in my view, it is clear that the petitioner has remedy of preferring revision against the order of Magistrate issuing process. Hence, in my view, it would be appropriate that the petitioner prefers a revision before the concerned Sessions Court against the order of the Magistrate issuing process.

4. Liberty is granted to the petitioner to prefer the necessary revision before the concerned

Sessions Court. Exemption in respect of personal appearance of the petitioners before the trial Court is granted for a period of four weeks from today. It is clarified that the revision shall be preferred in respect of the order of the Magistrate issuing process against the petitioners and not in respect of the order dated 2.3.2005.

5. On the necessary revision being preferred by the petitioners before the concerned Sessions Court, the concerned Sessions Court shall dispose of the matter on merits after hearing the necessary parties. All contentions of the parties are left open.

6. Writ petition is disposed of.

[V.K.TAHILRAMANI,J.]